tend the liability of a seller or manufacturer to third parties where an article not inherently dangerous becomes dangerous by reason of negligent preparation. The rule as laid down in the principal case is said (29 CYC. 477), to rest not on warranty, nor on privity of contract, but arises from a duty not to expose the public to danger. If this is so, it would seem that the public is as much exposed to danger when an article is made dangerous through defective construction, as when it is naturally so. The liability, it is submitted, rests in tort, not in contract, and if the *Buick* case is as good law as it is good sense, the court in the principal case should have submitted the question of the negligence of the defendant to the jury. See 18 MICH. L. REV. 676.

NUISANCE—WHAT CONSTITUTES A NUISANCE.—D's boiler plant was situated directly in the rear of P's dwelling. P complained of noise and vibration, and asked for injunctive relief and damages. The master found that there was no serious jarring or shaking, nor such loud and disturbing noises as to make the house uninhabitable. On the other hand, he found that P's dwelling "was not as desirable a place in which to live as it was before the boiler shop was built," and that the value of P's property had been detrimentally affected to the extent of $500. The trial court dismissed the bill upon these findings, but on appeal it was *held,* that P was entitled to $500 damages. *Sardo v. James Russel Boiler Wks. Co.,* (Mass., 1922), 135 N. E. 127.

Probably the decision of the court would not seem extraordinary upon a reading of the master's findings *in toto.* But if based solely upon the findings of the master as stated in the report (paraphrased above), the decision would seem to require quite an enlargement of our present conception of what constitutes an actionable nuisance. From earliest times to the present day, mere diminution in the value of P's property as a result of defendant's acts, has been held insufficient to constitute such acts a nuisance. *Harrison v. Good,* L. R. 11 Eq. Cas. 338; *Gibson v. Donk,* 7 Mo. App. 37; *Falloon v. Schilling,* 29 Kan. 292; *Duncan v. Hayes,* 22 N. J. Eq. 25. Such diminution in value is permitted as an element in fixing the amount of damages to be awarded, but the nuisance itself must be hypothecated upon other grounds. The last statement may have to be modified as to some of the recent "hospital" and "undertaking establishment" cases. A late and well considered case of this sort is *Cunningham v. Miller* (Wis., 1922), 189 N. W. 531. Notes discussing the recent cases appear in 18 MICH. L. REV. 246; 19 MICH. L. REV. 111, 450; and 20 MICH. L. REV. 457. See also 17 MICH. L. REV. 428, and 16 MICH. L. REV. 136. But none of these cases goes further than to consider the decrease in property value in connection with other elements which of themselves might be sufficient to support the holding. No such aid can be adduced in support of the holding in the principal case, for the only other element specifically stated, e. g. the finding that P's dwelling "was not as desirable a place in which to live," is so broad and indefinite as to be practicallly meaningless. Are we to assume, then, that Massachusetts has taken such a radical step as

this would seem to indicate? Probably not, for the briefness of the report and lack of discussion would hardly warrant such an assumption. The best explanation is probably that suggested in the opening sentence of this discussion.

SALES—LIABILITY OF MANUFACTURER OF FOOD TO CONSUMER WHO BUYS FROM A DEALER.—Plaintiff bought from her grocer a loaf of bread made by the defendant baking company, on the wrapper of which was a statement that the bread was pure, healthful and a nutritious food. On eating the bread the plaintiff struck a wire nail. On a count drawn in deceit she recovered a judgment for the alleged injury in the superior court, which judgment was reversed for the failure of the plaintiff to prove knowledge on the part of the defendant. *Newhall v. Ward Baking Co.* (Mass.), 134 N. E. 625.

If the plaintiff here had brought her action on the theory either of implied warranty or tort for negligence, she could no doubt have recovered, for in neither of these actions is the proof of knowledge essential. Numerous cases have held that the manufacturer impliedly warrants his product to be fit for food and that such warranty runs in favor of all who may purchase in the legitimate channels of trade. *Ward v. Morehead City Sea Food Co.*, 171 N. C. 33; *Catani v. Swift*, 251 Pa. 52; *Mazetti v. Armour*, 75 Wash. 622; *Davis v. Van Camp* (Ia. 1920), 176 N. W. 382; *Chysky v. Drake Bros.*, 182 N. Y. S. 459. There is a minority doctrine, however, which holds that there is no implied obligation in favor of anyone not in privity of contract with the manufacturer. *Nelson v. Armour Packing Co.*, 76 Ark. 352; *Roberts v. Anheuser-Busch Brewing Co.*, 211 Mass. 449; *Crigger v. Coca Cola Bottling Works*, 132 Tenn. 545. Those jurisdictions that have difficulty in extending the doctrine of implied warranty this far have given relief to the injured consumer through an action of tort for negligence. In those cases where negligence on the part of the defendant can be shown the courts have said that his acts are so important to the welfare and health of the public that he owes them a duty to use great care in the making of their food, regardless of any contract between them. *Tomlinson v. Armour*, 75 N. J. L. 748; *Roberts v. Anheuser-Busch, supra; Ketterer v. Armour*, 200 Fed. 322; *Wilson v. Ferguson*, 214 Mass. 265; *Crigger v. Coca Cola Bottling Works, supra.* In the cases where no negligence on the part of the manufacturer can be shown the courts have imposed an absolute duty to make pure food; he must know that it is fit or take the consequences if it proves destructive. *Parks v. G. C. Yost Pie Co.* (Kan.), 144 Pac. 202; *Watson v. Augusta Brewing Co.*, 124 Ga. 121; *Jackson Coca Cola B. W. v. Chapman*, 106 Miss. 864. See MICH. L. REV. 436; 5 IOWA L. BUL. 86.

STATUTES—ACT REGULATING SPEED OF AUTOMOBILES IN "THICKLY SETTLED DISTRICTS" HELD VOID FOR UNCERTAINTY.—Defendant was convicted under a statute reading, "It is forbidden to operate or drive a motor vehicle on any public highway where the territory contiguous thereto is closely built up at a greater rate of speed than eighteen miles per hour." In an